

ESCAMBIA COUNTY ALABAMA
EVICTIION / UNLAWFUL DETAINER PROCEDURE

(pursuant to 35-9-1, et seq., 35-9A-101, et seq., and 6-6-310, et seq., Code of Alabama 1975)

These procedural instructions are a courtesy by this counties Circuit Clerk's Office. It is important to understand the implications of self-representation. By doing so you are acting as your own lawyer and you are accepting full legal and fiscal responsibility in seeing that your claim is successfully presented at each stage of the procedure until it is concluded.

Prior to filing with the court, a landlord must give the tenant(s) a written ***Notice of Termination***.

The notice may be delivered to the tenant(s), in person, or by certified mail, or by securely posting the notice at the entry to the premises. Any of these actions must be approved and signed by the landlord. The notice must identify the tenant(s), provide a description (full address) of the premises, and state the reasons for the termination, (amount of monetary deficiency or reason(s) for terminating rental agreement). A seven(7) day notice if the breach is for non-payment of rent (*form a*). A fourteen(14) day notice if the breach is for non-compliance(s) other than non-payment of rent (*form b*). The ***7 day period is counted in business days***. All other 'days' are counted as calendar days, and the day the notice is given is not counted.

Make an identical copy of this notice. It will be required if you file an Eviction/Unlawful Detainer.

1. If the issues are not resolved within the notice period, and/or the tenant does not surrender possession of the premises to the landlord within the notice period, then the landlord may submit a completed ***Statement of Claim - Eviction/Unlawful Detainer*** (*form C-59*), with the proper filing fee, to the Circuit Clerk's Office. (No Evidence Is To Be Filed At This Stage, however make certain a copy of the Notice of Termination IS filed with the Statement of Claim).

The current filing fee for District Court in Escambia County Alabama, is \$305.00 for an Eviction/Unlawful Detainer Action. This fee is for one(1) plaintiff and one(1) defendant. Each additional defendant is \$40.00, and each additional plaintiff is \$50.00 .

The filing fee must be paid at the time of the filing. ***** personal checks are not accepted. *****

2. Upon receipt of a properly completed ***Statement of Claim***, and with the appropriate filing fee, the Clerk will assign your claim a case number. Note that the case number is to be referenced in all verbal and written correspondence with the court. The Clerk will issue a summons with a copy of the complaint, to be served by a Sheriff Deputy.
3. When the **return of service** is filed with the Clerk, the plaintiff will be notified by mail. The defendant has seven(7) days from the date they were served to answer to the complaint regarding property, and fourteen(14) days from the date they were served to answer to the complaint regarding any money noted on the complaint.

If the defendant files an answer in response to the Statement of Claim, the case will be scheduled for a trial and all parties will be notified approximately ten(10) days prior to the court date.

If the defendant fails to file an answer to the Statement of Claim, the plaintiff may file for an Entry of Default Judgment for possession of the property and monetary claim. The plaintiff must complete/file an ***Application/Affidavit for Entry of Default*** (*form C-25*), and an ***Application/Affidavit for Entry of Default Judgment*** (*form C-25B*). For this action, there is a \$50.00 filing fee. The case will then be scheduled for a trial and all parties will be notified approximately ten(10) days prior to the court date.

IF YOU ARE UNCERTAIN AS TO HOW TO FILE THE APPROPRIATE FORMS BEYOND THESE INSTRUCTIONS, YOU SHOULD CONSULT A LAWYER FOR ADVICE. THE CLERK AND OTHER COURT PERSONNEL ARE PROHIBITED BY LAW TO GIVE YOU LEGAL ADVICE . (per Section 34-3-6 of The Code of Alabama 1975)

rev. 06/2018

ESCAMBIA COUNTY ALABAMA
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NOTE CONCERNING JUDGMENTS/APPEALS:

The judgment on property becomes final after seven(7) days from the entry of the judgment.
The monetary judgment becomes final after fourteen(14) days from the entry of the judgment.
If either party is dissatisfied with the District Court's decision, with regards to property and/or money, the dissatisfied party may appeal the decision within those days, as noted above by filing a Notice of Appeal (*form C-35*) in the Circuit Court. The Notice of Appeal must be accompanied by the appropriate filing fee, or an Affidavit of Substantial Hardship (*form C-10*) for the filing fee, and a Bond or Security for Costs if there was a judgment against you, as well as any due back rent and future rent with the Clerk of Court to stop any actions from the plaintiff to regain possession of the property during the appeal process.

NOTE REGARDING THE WRIT OF POSSESSION:

From the date of judgment a seven(7) day automatic-stay is mandatory by federal law in Alabama. Once that has elapsed and/or the date to vacate per the order has passed, (*which ever is later*), a Writ of Possession may be issued to return possession of the property to the Plaintiff/Landlord. ONLY upon written request from the plaintiff, will the Court then issue a Writ of Possession.

NOTE ON POST- JUDGMENT REMEDIES:

The party for whom the judgment is entered in favor of (the creditor) is responsible for the collection of the judgment from the party who owes the judgment (the debtor). The Clerk, the Court, or the State are NOT responsible for the collection of said judgment(s). The State does offer the following post-judgment processes to assist in collection of the judgment, including court cost, and other monies if awarded in the judgment. These processes are actionable only after the judgment is Final. (see above).

- A. **Process of Garnishment** (*form C-21*) – is a writ (order) to take part of a debtor's wages or other monies owed to him/her before he or she receives the money. The Writ of Garnishment is served on the debtor, and the debtor's employer, or financial institution, individual, or company holding the money owed to the debtor. (they are the Garnishee).
For this action, there is a \$90.00 filing fee, which may be added to the amount to be garnished.
- B. **Writ of Execution** (*form C-20*) – is a writ (order) directing the Sheriff to seize specific property owned by the debtor, to either restore possession of the property to the creditor, or to auction the property for which the proceeds from the sale of said property are then (in part) used to pay for all or a portion of the judgment owed to the creditor.
For this action, there is a \$60.00 filing fee, which may be added to the total cost listed.

NOTE REGARDING FORMS:

The forms noted in these instructions may be found at <http://eforms.alacourt.gov> or at the Circuit Clerk's Office, Civil Division, 314 Belleville Avenue, Room 214, Brewton, AL 36426.

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